

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MAXELL HOLDINGS, LTD.,

Plaintiff,

v.

AMPEREX TECHNOLOGY LIMITED,

Defendant.

CIVIL ACTION NO. 6:21-cv-347-ADA

JURY TRIAL DEMANDED

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER

Pursuant to the Court’s Order Governing Proceedings – Patent Case, plaintiff Maxell Holdings, Ltd. (“Plaintiff”) and specially appearing defendant Amperex Technology Limited (“Defendant”) hereby jointly move the Court to enter a Scheduling Order in this action. The parties have been unable to agree on a Scheduling Order and therefore each party has proposed a schedule for the Court’s consideration. Plaintiff’s proposed schedule is attached as Exhibit A, and Defendant’s proposed schedule is attached as Exhibit B. The parties’ respective positions regarding the proposed schedules are set forth below.

Plaintiff’s Statement:

Plaintiff respectfully requests that the Court enter Exhibit A as its Scheduling Order and reject Defendant’s second attempt to obtain a stay of this Court’s established deadlines. Plaintiff’s proposed schedule is based on the Court’s default schedule set forth in the Order Governing Proceedings – Patent Case and provides for an orderly and efficient set of deadlines under which the parties and the Court may conduct this action.

By proposing a schedule that delays the Court's default schedule until after a decision on its Motion to Dismiss, Defendant ignores the fact that this Court has already previously rejected Defendant's request to stay the Court's standard deadlines. On July 9, 2021, the parties jointly filed the Case Readiness Status Report identifying pre-*Markman* issues to be addressed by the Court. ECF No. 11 at 2–3. The first issue asked:

Whether the Court should issue a temporary stay of this case and postpone the Case Management Conference and associated deadlines in the Court's Order Governing Proceedings – Patent Case until the Court issues a ruling on Defendant's Motion to Dismiss, Transfer or Stay (ECF No. 10) pursuant to the first-to-file rule.

Id. at 3. Upon considering the parties' joint submission setting forth their respective positions on this issue, the Court ruled on July 16, 2021 that it "will not be issuing a stay at this time." E-mail from Robert Earle to counsel for Plaintiff and Defendant (July 16, 2021, 08:02 CDT). Afterward, Defendant relayed this ruling to the Chief Magistrate Judge of the District of New Jersey, advising that "the Texas court has denied the temporary stay, and ordered the parties to proceed under its automatic and inflexible schedule." Letter from Becky L. Caruso to the Honorable Mark Falk, *Ampere Tech. Ltd. v. Maxell, Ltd.*, No. 2:21-cv-08461-KM-MF, ECF No. 64 at 1 (D.N.J. July 16, 2021) (also attaching a timeline of deadlines based on the Court's Order Governing Proceedings – Patent Case).

The Court has thus already denied a stay pending resolution of Defendant's Motion to Dismiss, and it should reject Defendant's request for entry of a Scheduling Order that contradicts that prior ruling. As such, Plaintiff respectfully requests that the Court adopt the proposed schedule set forth in Exhibit A as the Court's Scheduling Order.

Defendant's Statement:

This case is a duplicative action filed by Plaintiff two days after Defendant sought a declaratory judgment in the District of New Jersey. Defendant respectfully requests that the Court

enter Exhibit B as its Scheduling Order to accommodate a ruling on the threshold first-to-file and other pending jurisdictional and service issues addressed in Defendant's Motion to Dismiss (ECF No. 10) before the parties proceed with significant activities, including claim construction. Defendant's proposed schedule permits a reasonable amount of time for a decision on the threshold issues, which would alleviate the undue prejudice of litigating the same case in two jurisdictions, promote judicial economy and comity between this Court and the New Jersey Court, and potentially save the Court (and the parties) a significant amount of time and resources. The case deadlines following the Court's decision on Defendant's Motion to Dismiss follow the standard timeline for each activity. Overall, Defendant's proposal affects the standard Markman and trial dates proposed by Plaintiff by less than 3 months, which does not prejudice Plaintiff.

While the Court previously declined to enter a temporary stay of all deadlines in this case prior to the CMC, the parties have since proceeded with jurisdictional discovery per the Court's standing order. Nothing from the Court's prior decision prevents Defendant's present request for a schedule that sets deadlines for certain activities in this case to occur after the Court's decision on the pending Motion to Dismiss. Defendant's proposed schedule seeks to promote judicial economy through the efficient resolution of the issues in this case while also minimizing unnecessary burden and expense. Therefore, Defendant respectfully requests that the Court adopt the proposed schedule set forth in Exhibit B as the Court's Scheduling Order.

Dated: August 6, 2021

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/s/ Hilary L. Preston

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing on August 6, 2021, via the Court's CM/ECF system.

/s/ Jeffrey T. Han
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